

When a retailer takes an item from inventory and makes a gift of it to someone the retailer is the user of the item and incurs a Use Tax liability on his cost price of the item. See 86 Ill. Adm. Code 150.305. (This is a GIL.)

November 14, 2003

Dear Xxxxx:

This letter is in response to your letter dated August 19, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are writing to request a determination on the applicability of the use tax on gifts given by our company to clients located in your state. AAA is a network marketing company which sells nutritional, personal care, and other consumer products. The products are distributed through independent contractors (Team Members). AAA collects and remits sales/use tax on behalf of its Team Members pursuant to an agreement with your state.

AAA is considering expanding its distribution by adding a 'party plan' for its Team Members. Team Members' clients would host parties where AAA products would be highlighted and sold. As incentive for holding multiple parties, Team Members would receive a gift from us of one of our popular products or a similar item. In addition, clients who host a party would receive a gift based on sales. For example, if five items are sold at the party, the host would receive a free bottle of lotion.

AAA would keep these gift items in its inventory located in the STATE until the gift is earned. At that point, AAA would pull the gift from inventory and send it via common carrier to the Team Member in your state. We are requesting a determination on how AAA should account for these gift transactions in your state. In particular, are we liable for use tax on the value of the gifts?

We greatly appreciate any clarification you can provide in helping us to comply with your state's tax laws, and ask that you identify the basis in statute, regulation, or ruling for your determination.

Thank you for your prompt consideration of this matter. If you have any questions, you may reach me at the address below.

The Use Tax is a tax imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. The Use Tax is paid to Illinois retailers registered to collect Use Tax. If the Use Tax is not paid to an Illinois registered retailer, the purchaser must self-assess the Use Tax at the rate of 6.25% and remit it to the Department.

"Use" means the exercise in Illinois by any person of any right or power over tangible personal property incident to the ownership of that property. The Department's regulation at 86 Ill. Adm. Code 150.305(c) provides that in a gift situation, although the donee of the gift is not a taxable user, the donor who purchases the property and gives it away in Illinois makes a taxable use of the property when making such gift. As a result, if a donor sends a gift from out-of-State to a Team Member in Illinois who gives the gift to a client in Illinois, the donor will owe Use Tax on his cost price of the gift. However, if a donor sends a gift directly from out-of-State to a Team Member in Illinois for the Team Member's use, no Use Tax is owed.

In addition, the Use Tax Act provides that in order to prevent actual or likely multi-state taxation, the Use Tax does not apply to the use of tangible personal property in this State of tangible personal property that is acquired outside this State and caused to be brought into this State by a person who has already paid a tax in another state in respect to the sale, purchase, or use of that property, to the extent of the amount of the tax properly due and paid in the other state. See 86 Ill. Adm. Code 150.310, enclosed. In addition, depreciation is allowed for out-of-State use. See the enclosed copy of 86 Ill. Adm. Code 150.110.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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Enc.